IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl.Misc.No.7774-M of 2007

DATE OF DECISION: MARCH 12, 2007

Vijay alias Koki

...PETITIONER

VERSUS

State of Haryana

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. H.S.Gill,Sr. Advocate
with Mr.Vivek Goyal, Advocate,
for the petitioner.
Mr.S.S.Mor, Sr.DAG,Haryana.
Mr.Robin Dutt, Advocate,
for the complainant.

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Petitioner Vijay alias Koki, who was summoned under Section 319 Cr.P.C. as an additional accused, has filed this petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No.39 dated 13.3.2004 registered under Sections 302/364/201/120-B IPC read with Sections 25/54/59 of the Arms Act at Police Station City Bahadurgarh, District Jhajjar.

I have heard the counsel for the parties and gone through the contents of the FIR.

In this case, the aforesaid FIR was registered on 13.3.2004 on the basis of the statement made by Devinder Gupta alias Vicky, son of the deceased. In the FIR, it has been alleged that the uncle of the complainant, namely, Subhash was stabbed by the elder brother of the petitioner about 20 years ago and in that regard a case was also registered against him. It has been alleged that due to the said grudge, the petitioner along with Dinesh @ Datuva, Chikna @ Raju had called the deceased from his tent house, shot him dead and thrown his dead body at Patel Nagar. Subsequently, during the

investigation, one Kuldip @ Monu, whose name was not given in the FIR, was arrested. He made a disclosure statement to the effect that he along with Dharmender @ Dhanna, Rajesh @ Mogli, Toni Sardar and Neetu Rehal had committed the murder of Rakesh Gupta. During further investigation, Dharmender was arrested. He also suffered a disclosure statement in which it was stated that he along with Kuldip @ Monu, Rajesh @ Mogli and Tony Sardar had committed the murder of Rakesh Gupta. He further stated that the pistol, which was used in the murder of Rakesh Gupta, was handed over to Kuldip @ Monu after commission of the crime. Subsequently, Kuldip @ Monu was also arrested. He suffered a disclosure statement in which he stated that he along with Dinesh @ Datuva, Dharmender @ Dhanna, Rajesh @ Mogli, Vijay @ Koki, Rajesh @ Raju @ Chikna, Neetu Rehal and Tony Sardar were involved in the murder of Rakesh Gupta. As far as the petitioner is concerned, it was alleged that after the commission of the crime, the pistol used in the crime was given to the petitioner. After investigation, the police submitted the challan only against Kuldip @ Monu, Dharmender @ Dhanna and Neetu Rehal, whereas the other co-accused Rajesh @ Mogli, Vijay @ Koki (petitioner), Rajesh @ Raju @ Chikna and Dinesh @ Datuva were kept in column No.2 being innocent.

After filing of the challan, the complainant filed Crl.Misc.No.41239-M of 2004 for transfer of the investigation of the case to the CBI or some independent agency as the police did not conduct the proper investigation. This Court vide order dated 6.10.2004 directed that the investigation of the case be conducted by Crime Branch, CID, Haryana. During the investigation, co-accused Rajesh @ Mogli was arrested by the Delhi Police in a different case. He made a disclosure statement in which he named that the petitioner is one of the accused, who conspired for the murder of Rakesh Gupta as the petitioner had given the pistol to him which he had given to accused Dharmender @ Dhanna, who fired three shots upon Rakesh Gupta. It is further stated that after the occurrence, Dharmender @ Dhanna returned the pistol to him which he again handed over to the petitioner. The disclosure statement of Dinesh @ Datuva was also recorded in which he did not name the petitioner as one of the accused.

In the second investigation also, the petitioner was found

innocent and further challan was filed only against Dinesh @ Datuva, Rajesh @ Raju @ Chikna, Swaran Singh @ Tony Sardar and Kamal Mehta, whereas the petitioner was kept in column No.2.

Subsequently, after the examination of PW11-Devinder Gupta (complainant) and PW12-Mohan Lal, who named the petitioner as conspirator to commit the offence, the petitioner was summoned to face the trial under Section 319 Cr.P.C. along with other accused. The anticipatory bail application filed by the petitioner was dismissed by this Court on November 13, 2006. Thereafter, he was arrested on November 14, 2006 and since then he is in custody.

Counsel for the petitioner contends that the investigation in this case was conducted twice and in both the investigations, the petitioner was found innocent. Counsel further contends that except the statement of Devinder Gupta and the statements of Vipan Kumar and Mohan Lal that they had overheard the accused making the planning, and except the disclosure statement of the co-accused, which is not admissible in evidence, there is no other evidence against the petitioner. He further contends that in this case no recovery of the alleged pistol has been made from the petitioner. Counsel contends that all the co-accused in this case, including the main accused Dharmender @ Dhanna, except one Rajesh @ Mogli and the petitioner are on bail. Counsel further contends that the motive alleged against the petitioner of conspiring for the alleged offence is that the uncle of the complainant, namely, Subhash was stabbed by the elder brother of the petitioner about 20 years ago and in that regard a case was also registered against him. It has been alleged that due to the said grudge, the alleged offence has been committed. Counsel contends that the petitioner is now 25 years old and at that time he was only 5 years old, therefore, the motive alleged is of a weak type. Counsel further contends that in this case the petitioner has been falsely implicated and trial is not going to conclude soon as out of 35 witnesses, only 2 witnesses have been examined till date.

Counsel for the respondent-State submitted that the petitioner is the main conspirator for the alleged offence, therefore, bail should not be granted to him. However, it has been admitted that the main accused in this case, namely, Dharmender @ Dhanna, who was found involved in both the

investigations, has been released on bail, though the application for cancellation of bail filed by the complainant is pending. It has also been not disputed that except the statements of the complainant, Vipan Kumar and Mohan Lal and disclosure statement of the co-accused, there is no other evidence against the petitioner.

Keeping in view the aforesaid facts and the fact that in two investigations, the petitioner was found innocent as also the fact that the petitioner is in custody since November 14, 2006 and the trial is not going to conclude soon, without expressing any opinion on the merits of the case, I deem it appropriate to grant regular bail to the petitioner, and he is accordingly ordered to be released on bail to the satisfaction of the trial Court.

March 12, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE